

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

**STATE OF OKLAHOMA, ex rel.
W. A. DREW EDMONDSON, in his capacity as
ATTORNEY GENERAL OF THE STATE OF
OKLAHOMA and OKLAHOMA SECRETARY
OF THE ENVIRONMENT C. MILES TOLBERT,
in his capacity as the TRUSTEE FOR NATURAL
RESOURCES FOR THE STATE OF OKLAHOMA,**

Plaintiff,

vs.

05-CV-0329 TCK-SAJ

**TYSON FOODS, INC., TYSON POULTRY, INC.,
TYSON CHICKEN, INC., COBB-VANTRESS, INC.,
AVIAGEN, INC., CAL-MAINE FOODS, INC.,
CAL-MAINE FARMS, INC., CARGILL, INC.,
CARGILL TURKEY PRODUCTION, LLC,
GEORGE'S, INC., GEORGE'S FARMS, INC.,
PETERSON FARMS, INC., SIMMONS FOODS, INC.,
and WILLOW BROOK FOODS, INC.,**

Defendants.

**TYSON FOODS, INC., TYSON POULTRY, INC.,
TYSON CHICKEN, INC., COBB-VANTRESS, INC.,
GEORGE'S, INC., GEORGE'S FARMS, INC.,
PETERSON FARMS, INC., SIMMONS FOODS, INC.,
and WILLOW BROOK FOODS, INC.,**

Third Party Plaintiffs,

vs.

CITY OF TAHLEQUAH, *et al.*,

Third Party Defendants

**RESPONSE OF DEFENDANT CARGILL, INC. TO STATE OF OKLAHOMA'S
AUGUST 24, 2006 MOTION TO COMPEL RESPONSES TO MAY 30, 2006
REQUESTS FOR PRODUCTION**

Defendant Cargill, Inc. (“Cargill”) submits its Response to the State of Oklahoma’s Motion to Compel Cargill, Inc. to Respond to Its May 30, 2006 Set of Requests for Production and Brief in Support (Dkt. #895) (“Motion to Compel”).¹

I. INTRODUCTION

What is good for the City is good for the State, says the State’s approach to discovery in this case. The State seeks access to every piece of discovery that was produced by Cargill in a previous lawsuit involving the City of Tulsa and an entirely different watershed.² Through its motion, the State asks the Court to dismiss fundamental discovery concerns such as relevance, or protective orders.

The abusiveness of the requests is neatly summed up in Request No. 1: “Please produce for inspection and copying copies of all documents and materials made available for inspection and copying by you to the plaintiffs in the City of Tulsa” lawsuit.³ Also sought are all deposition transcripts (including those of third parties), privilege logs, and even anything that conceivably relates to Cargill’s performance of a settlement agreement in that case. As an afterthought, the State asks to review any joint defense agreement existing in this case.

Cargill objected to these requests on multiple grounds, and in particular on the basis that the Tulsa lawsuit involved entirely distinct poultry operations in a separate watershed, involved terrain, hydrology, reservoirs, point sources, third-party operations, experts, alleged injuries and issues that were different from those at issue in the State’s

¹ Cargill maintains and reasserts its prior objections to the State’s requests for production to the extent that this Response does not directly address them, including objections to the extent the requests seek Cargill’s confidential business information and trade secrets.

² *City of Tulsa v. Tyson Foods, Inc.*, Case No. 01-CV-0900EA(C) (the “Tulsa lawsuit”).

³ See Responses of Cargill, Inc. to State of Oklahoma’s May 30, 2006 Set of Requests for Production to Poultry Integrator Defendants, Request No. 1, attached to Motion to Compel as Exhibit “A”.

lawsuit over the Illinois River Watershed, which rendered the State's requests impermissibly overly broad.

The State's requests for production of all documents from another litigation without any attempt to limit the requests to reach documents with evidentiary value in the current lawsuit is both inappropriate and prohibited under Federal Rule of Civil Procedure 26. Nevertheless, the State seeks to justify its discovery by contending that its objective was "to save *all the parties* involved time and money." *See* Motion to Compel at 2 (emphasis added). This claim is untenable, as nearly all the documents encompassed by the requests exist only in hard copy form.

Notwithstanding the similarities the State claims between this lawsuit and the Tulsa lawsuit, the State's May 30, 2006 requests for production far exceed the scope of relevancy of any claim or defense at issue in this lawsuit. Furthermore, the State has not shown that its overly broad requests are supported by the good cause required by Rule 26 to gain access to the otherwise irrelevant, undiscoverable documents.

At a superficial level, there are similarities between this lawsuit and the Tulsa lawsuit.⁴ They both involve a watershed, for example. But that's where the similarities end. The State's refusal to expend any effort or to reach any compromise has left the parties at an impasse. Under Rule 26, the State must demonstrate that the materials requested from the Tulsa lawsuit, as well as any current joint defense agreement, have some evidentiary value in this lawsuit.

⁴ The State lists many purported similarities between the cases, but it fails to show that the documents from the Tulsa Lawsuit will be probative of any issue in the instant case. Using the State's loose logic, a party could probe freely into another party's prior litigation without making any showing of actual relevance to the matter at hand by simply alleging that the nature of the lawsuits were similar. Rule 26 requires more.

The blanket requests that are the subject of its Motion to Compel do not pass muster under this standard. The State cannot reasonably contend that every document, every grower file, every expert's file, every privilege log or every deposition transcript referring, relating or pertaining to the Tulsa lawsuit and the joint defense agreements in this action are relevant or will lead to the discovery of admissible evidence in this action. Instead, the State wants discovery to be produced first, and then later, at its convenience, the State will determine what is relevant or will lead to the discovery of relevant evidence. This reversal of the burden of discovery is not an option under Rule 26. The State's Motion to Compel should be denied with regard to the overly broad Requests for Production Nos. 1 through 7, and the State should be directed by the Court to revise their requests to a scope that comports with Rule 26.

II. ARGUMENT AND AUTHORITY

A. The State is Not Entitled to Blanket Production of Discovery Involving the *City of Tulsa* Case

Courts have recognized that "[t]he legal tenet that relevancy in the discovery context is broader than in the context of admissibility should not be misapplied so as to allow *fishing expeditions* in discovery." *Martinez v. Cornell Corrections of Texas*, 229 F.R.D. 215, 218 (D.N.M. 2005) (quoting *Zenith Electronics Corp. v. Exzec, Inc.*, 1998 WL 9181, at *2 (N.D.Ill.1998) (emphasis added). It is long established that discovery cannot be used "merely to vex or harass litigants." *Keenan v. Texas Production Co.*, 84 F.2d 826, 828 (10th Cir. 1936). "Neither can it be utilized for a mere fishing expedition, nor for impertinent intrusion." *Id.* Furthermore, "the district court . . . is not "required to permit plaintiff to engage in a 'fishing expedition' in the hope of supporting his claim.'" *Martinez* at 218 (quoting *McGee v. Hayes*, 43 Fed.Appx. 214, 217 (10th Cir. 2002)). The

State's requested discovery constitutes an impermissible endeavor to compel an opposing party to produce documents from previous litigation involving different operations in a different watershed based on the mere whim that there may be a few documents of interest discovered.


1. The State's Requests for Production Are Overly Broad, Burdensome, and Include a Mass of Irrelevant Documents

The State's unlimited requests for production are overly broad. In the case of *Audiotext Communications v. U.S. Telecom, Inc.*, the court denied the plaintiff's motion to compel discovery to the extent that they exceeded relevant issues in the litigation. The court stated:

Requests should be reasonably specific, allowing the respondent to readily identify what is wanted. Requests which are worded too broadly or are too all inclusive of a general topic function like a giant broom, sweeping everything in their path, useful or not. They require the respondent either to guess or move through mental gymnastics which are unreasonably time-consuming and burdensome to determine which of many pieces of paper may conceivably contain some detail, either obvious or hidden, within the scope of the request. The court does not find that reasonable discovery contemplates that kind of wasteful effort. In this instance the court finds that most of these requests fail the test."

Audiotext Communications v. U.S. Telecom, Inc., 1995 WL 18759 * 1 (D. Kan. 1995).

The total discovery materials from the *City of Tulsa* case sought by the State's requests fill in excess of 100 document boxes containing tens of thousands of documents available only in paper form. A mere sampling of the completely irrelevant topics covered by the State's requests include:

- Nutrient Management Plans for hundreds of Eucha/Spavinaw ("E/S") poultry growers;
- Contract  addenda for hundreds of E/S poultry growers;
- Flock settlement print outs for hundreds of E/S poultry growers;

- Vaccination and mortality records for hundreds of E/S poultry growers;
- Poultry house time and temperature records for hundreds of E/S poultry growers;
- Propane purchase records for hundreds of E/S poultry growers;
- Flock inspection reports for hundreds of E/S poultry growers;
- Grower files for hundreds of E/S poultry growers;
- Depositions of dozens of E/S poultry growers;
- Expansive logs of privileged and confidential documents responsive to Tulsa's discovery requests;⁵
- Reports, depositions and files of experts covering irrelevant topics such as the operations of Tulsa's Wastewater treatment lagoons at lake Eucha; Tulsa's management of Lake Eucha and Spavinaw; Tulsa's potable water treatment technologies, plants; water quality of streams, groundwater and reservoirs in E/S Watershed; impacts of third-parties identified in the E/S Watershed; criticisms of the Plaintiffs' experts' principles and methodologies; modeling of hydrology and reservoirs in the E/S Watershed; Analysis of Tulsa's claimed taste and odor complaints; maintenance of Tulsa's water distribution system;⁶ and
- Documents pulled from Tulsa's files relating to the watershed, the lagoons, taste and odor, and water treatment.

The State asks the Court to subject Cargill to the same abusive and wasteful form of discovery that the *Audiotext* court denied. The State cannot reasonably contend that its

⁵ If the Court compels production of any of the Tulsa lawsuit documents in this case, and that production includes any privileged or confidential documents, those documents will have to be logged in this case. The claims of privilege in a prior case are inextricably intertwined with the production of those underlying documents. If the scope of the production is narrowed by virtue of the Court's Order on the instant Motion, it would be improper to require disclosure, by virtue of producing its prior logs, of the existence of other non-responsive documents, and thus as a stand-alone request, the State's pursuit of the Tulsa privilege logs should be denied.

⁶ The work product of these experts has no relevance to the Illinois River Watershed, and since Cargill has not designated any of the same experts to testify for it in this case, these reports and materials cannot be used as impeachment material. Should Cargill designate any of the experts used in the Tulsa lawsuit, Plaintiffs can re-issue requests related to their prior work.

broad and burdensome requests for production are “simply an effort to save *all the parties* involved time and money.” *See* Motion to Compel at 2 (emphasis added).

The State advances the erroneous claim that Cargill’s assertion of burdensomeness is conclusory and further suggests that Cargill failed to allege specific facts to support the proposition of burdensomeness, yet the State’s own requests for production fail to supply any specificity as to how documents the State seeks pertain to the issues at hand.

The State cites *Tucker v. Outsu Tire & Rubber Co.* for the proposition that non-specific objections are insufficient to prevent requested discovery. *Tucker v. Outsu Tire & Rubber Co.*, 191 F.R.D. 495 (D. Md. 2000). The State’s argument fails as Cargill objected to the State’s discovery requests in detail as stated in Cargill’s responses to the State’s May 30, 2006 requests for production, and Cargill continues to object in this Response. The State further refuses to recognize Cargill’s objections regarding the relevant statutory periods intended to define a reasonable scope of discovery.⁷ Therefore, Cargill has fulfilled its obligations to show specific facts that establish the overly broad nature of the State’s requested discovery.

2. Based Upon the Overbreadth of The State’s Requests, it Failed to Meet its Burden to Show Relevance

As set forth in the prior section, the State’s requests for production encompass a many irrelevant documents and materials that are not discoverable in this case. Federal

⁷ The State’s requested discovery and the scope of reasonable burden should be limited to the longest period of limitations under the claims asserted, *i.e.*, its CERCLA claims. CERCLA § 112(d), 42 U.S.C. § 9612(d). Despite the State’s contention that it is unencumbered by any statute of limitations, several federal courts have recognized the applicability of the CERCLA statute of limitations as states’ claims. *See State of Colo. v. ASARCO, Inc.*, 616 F.Supp. 822 (D. Colo. 1985); *State of Idaho v. Bunker Hill Co.*, 634 F.Supp. 800 (D.Idaho 1986); *State of N.Y. v. General Elec. Co.*, 592 F.Supp. 291 (N.D.N.Y. 1984).

Rule of Civil Procedure 26 controls the scope of discovery and provides that “[p]arties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party” Fed. R. Civ. P. 26(b)(1). Courts have held that “a request for discovery should be allowed unless it is clear that the information sought can have no possible bearing on the claim or defense of a party.” *Owens v. Sprint/United Mgmt. Co.*, 221 F.R.D. 649, 652 (D. Kan. 2004). “[T]he object of inquiry must have some evidentiary value before an order to compel disclosure of otherwise inadmissible material will issue”. *Martinez v. Cornell Corrections of Texas*, 229 F.R.D. 215, 218 (D.N.M. 2005) (quoting *Zenith Electronics Corp. v. Exzec, Inc.*, 1998 WL 9181, at *2 (N.D. Ill. 1998)). Here, the State oversimplifies the relevancy issue by asserting that *all* documents and materials requested from the *City of Tulsa* case are relevant to this lawsuit despite its admission that “the instant case and the *City of Tulsa* case are not completely identical.” See Motion to Compel at 5. It would constitute a departure from logic if Cargill is compelled to produce documents and materials encompassing *all* issues of the *City of Tulsa* case, when—by the State’s concession—only a fraction of the information sought potentially applies to the issues in this lawsuit. It is the State’s burden to propound discovery that reasonably defines the scope of documents sought. It is not Cargill’s obligation to sift the mass of documents from the *City of Tulsa* case to make decisions about what might possibly be relevant within these broad requests.

The State fails to acknowledge the most significant distinctions between the Tulsa lawsuit and this action. The setting for the lawsuits are distinct –two separate watersheds are at issue. By definition, the activities in one watershed cannot and do not affect water in another watershed. Further, the alleged impacts in the Illinois River Watershed could

only derive from conduct on lands within its boundaries. Thus, ownership, operations, and finances of poultry growers in the E/S Watershed do not have any impact or probative value with respect to the Illinois River Watershed. How can the State argue that it needs information regarding how Tulsa managed its reservoirs, water treatment plants, lagoons and distribution system, including the experts' evaluations of these issues to advance this case? It cannot. How can the defense experts' evaluations of the principles and methodologies employed by Tulsa's experts be used in the instant case? They cannot. The distinctions between the two cases make it clear that the scope of State's requests for production include documents and materials having neither evidentiary value nor any bearing on any claim or defense in this lawsuit. Thus, the State's motion to compel should be denied because irrelevant documents and materials will make up the vast bulk of the documents sought.

The State has failed to meet its burden to establish relevance. "[W]hen the request is overly broad on its face or when relevancy is not readily apparent, the party seeking the discovery has the burden to show the relevancy of the request." *Owens v. Sprint/United Mgmt. Co.*, 221 F.R.D. 649, 652 (D. Kan. 2004). Here, the State's requests are both overly broad on their face and it is not readily apparent how *all* or even a substantial portion of the documents requested are relevant to the issues in this lawsuit.

The State relies heavily on a single products liability case to claim that all discovery in the Tulsa lawsuit is somehow relevant to its own. *Snowden v. Connaught Labs., Inc.*, 137 F.R.D. 325 (D. Kan. 1991). However, the issues in this lawsuit are significantly different from those in the *Snowden* case. First, unlike *Snowden*, this case is not a products liability case where the requested discovery of the prior litigation involves

uniform subject matter, such as a single identical manufactured product. On the contrary, the subject matter of this lawsuit involves allegations of contamination attributed to a multitude of factors that are unique to a given geographic region.

Second, the *Snowden* case does not control because it applies a prior version of Federal Rule of Civil Procedure 26. *Snowden v. Connaught Labs., Inc.*, 137 F.R.D. 325 (D. Kan. 1991). Since the *Snowden* decision, the scope of relevant discovery under Rule 26 has been limited to that which is “relevant to a claim or defense.” Fed. R. Civ. P. 26(b)(1). The State asks the Court to apply an outdated and broader version of Rule 26 applied in *Snowden*, allowing discovery “if there is any possibility that the information sought may be relevant to the subject matter of the action.” *Snowden* at 329.

Following the amendments to Rule 26, courts have recognized the narrowing of relevant discovery scope “from ‘subject matter’ of the action to ‘claim or defense or defense of any party.’” *Johnson Matthey, Inc. v. Research Corp.*, 2002 WL 31235717 * 2 (S.D.N.Y. 2002) (citing Fed. R. Civ. P. 26(b)(1) advisory committee’s note to the 2000 amendment); *see also Martinez v. Cornell Corrections of Texas*, 229 F.R.D. 215, 218 (D.N.M. 2005) (stating that the 2000 amendment was made with the intent “that the parties and the court focus on the actual claims and defenses involved in the action”). The *Johnson Matthey* court ultimately denied a motion to compel similar to the State’s (seeking discovery of documents related to prior litigation) because the request concerned matters which are “in no way relevant to a claim or defense at issue.” *Id.* Like that case, the State’s requests for production encompass documents and materials from prior litigation that are irrelevant to claims or defenses in *this lawsuit*. Thus, the State’s

requests for production exceed the scope of relevant discovery permitted under the current version of Rule 26.

Cargill has met its burden required to establish that the State's requests are overly broad due to the lack of relevance:

When the discovery sought appears relevant, the party resisting the discovery has the burden to establish the lack of relevance by demonstrating that the requested discovery (1) does not come within the scope of relevance as defined under Fed.R.Civ.P. 26(b)(1), or (2) is of such marginal relevance that the potential harm occasioned by discovery would outweigh the ordinary presumption in favor of broad disclosure.

Owens v. Sprint/United Mgmt. Co., at 652. Cargill has shown that the requested discovery exceeds the scope of relevance, and any marginally relevant information contained in the expanse of the Tulsa lawsuit documents is substantially outweighed by substantial burden and potential harm that would be imposed by production. Therefore, Cargill has fulfilled each of the independent requirements for establishing a lack of relevance of the materials sought.

B. The Joint Defense Agreements are not Discoverable

The State seeks to invade the province of Cargill's privilege by moving to compel production of any joint defense agreement executed in conjunction with this lawsuit. The State makes the incredible assertion that it requires access to these joint defense agreements in order that it might "evaluate Cargill's privilege claims in this litigation." *See Motion to Compel* at 10. Notably, this is the State's only justification for requesting documents which are privileged and otherwise irrelevant to any claim asserted by the State in this action. Consequently, the State has failed to show that a joint defense agreement is a discoverable document under the current version of Rule 26.

As an initial matter, the existence of any privilege is a matter of law exclusively within the Court's domain to evaluate and determine. *See, e.g., Dick v. Truck Ins. Exch.*, 386 F.2d 145, 147 n.2 (10th Cir. 1967); *SCO Group, Inc. v. Novell, Inc.*, 377 F. Supp. 2d 1145, 1152 (D. Utah 2005). Furthermore, a written agreement is not necessary for a party or parties to maintain a joint defense arrangement or to assert a claim of joint defense privilege. *United States v. Stepney*, 246 F. Supp. 2d 1069, 1080 n.5 (N.D. Cal. 2003). The existence of a written agreement merely assists *the trial court* in assessing whether a particular communication was made pursuant to a joint defense effort. *Id.*

That said, however, any joint defense agreements to which Cargill is a party in this lawsuit are protected by the common interest privilege in conjunction with either the attorney/client privilege or the attorney work product doctrine. *McNally Tunneling Corp. v. City of Evanston*, 2001 WL 1246630 (N.D. Ill. 2001). The common interest doctrine extends protections afforded by other doctrines, such as attorney client privilege and attorney work product, to protect privileged communications to disclosed to third parties sharing a common interest in the litigation that would otherwise constitute waiver. *Id.* at *2. The rationale for common interest protection is that "persons who share a common interest in litigation should be able to communicate with their respective attorneys and with each other to more effectively prosecute or defend their claims." *United States v. Duke Energy Corp.*, 214 F.R.D. 383, 387 (M.D. N.C. 2003). Here, Cargill shares a common interest in the outcome of the litigation with its Co-Defendants named in this lawsuit and, accordingly, this is reflected in the joint defense agreements. The joint defense agreements contain both attorney/client communications and work product. Thus, Cargill's joint defense agreements are protected despite having been disclosed to

the Co-Defendants because the common interest doctrine extends the attorney/client communications or work product protections to the other Co-Defendants.

Cargill's joint defense agreements are protected from discovery by the common interest doctrine in conjunction with the attorney/client privilege. *McNally*, 2001 WL 1246630 at * 4. The *McNally* court found that a joint defense agreement can be protected by attorney/client privilege where "(1) legal advice of any kind is sought, (2) from a professional legal advisor in her capacity as such, (3) the communications relating to that purpose, (4) made in confidence, (5) by the client, (6) are at his instance permanently protected (7) from disclosure by himself or by the legal advisor (8) except the protection be waived." *McNally*, 2001 WL 1246630 at * 4 (applying Illinois law). Here, Cargill's joint defense agreements meet these elements, and notwithstanding the fact that the State fails to cite authority to the contrary, they are therefore protected by the combination of the common interest doctrine and attorney/client privilege.

In addition, Cargill's joint defense agreements are protected from discovery by the common interest doctrine in conjunction with the work product doctrine. The *McNally* court held that, if disclosed, the joint defense agreement in that case was protected as work product to the extent that it would reveal mental impressions and thought processes of attorneys for the defendants sharing a common interest. *McNally*, 2001 WL 1246630 at * 4. The joint defense agreement in the *McNally* case described the co-defendant's joint defense strategy. *Id.* at * 3. That court further reasoned that the joint defense agreement was protected because it had been clearly prepared in anticipation of litigation and the document would reveal the mental processes of the City of Evanston's attorney regarding the possible defense to the litigation. *Id.* at * 4. Here, Cargill's joint

defense agreements were clearly prepared in anticipation of litigation and contain information that, if disclosed, would reveal attorneys' mental impressions and thought processes, such as litigation strategy. Therefore, Cargill's joint defense agreements in this lawsuit are protected by the common interest doctrine in combination with the attorney work product doctrine.

The State cites a case that applies the common interest and work product doctrines applied in *McNally. Power Mosfet Techs. v. Siemens AG*, 206 F.R.D. 422 (E.D. Tex 2000). However, even though the *Power Mofset* court correctly applies the same principles in its holding, that case is factually distinct from Cargill's case. *Id.* The court in *Power Mofset* found the joint defense agreement was not protected as work product because it did not reveal counsel's mental impressions or thought processes. *Id.* Here, Cargill's joint defense agreements contain information that, if disclosed, would reveal its attorneys' mental impressions and thought processes.

The State has failed to establish the requisite proof required by Federal Rule of Civil Procedure 26(b)(3) to discover documents otherwise protected by the work product doctrine. The work product doctrine provides a qualified privilege that may be overcome if the party seeking discovery establishes either a 'substantial need' or 'undue hardship' argument that justifies disclosing the protected document or thing. *Id.*, at * 4 (discussing Fed. R. Civ. P. 26(b)(3)). As previously explained, the State has failed to show a substantial need or undue hardship to justify the need for obtaining Cargill's joint defense agreements despite work product protection. The State only alleges "[s]uch agreements are relevant inasmuch, to the extent there are any, they are necessary for the State to evaluate Cargill's privilege claims in this litigation." Motion to Compel at 10. This

proposition does not establish the ‘substantial need’ or ‘undue hardship’ necessary to satisfy Rule 26(b)(3) to obtain the joint defense agreement over work product protection.

C. The State is not Entitled to Discover the Confidential Documents Reflecting the Implementation of the *City of Tulsa* Settlement

In its Request No. 6, the State seeks documents relating to “the implementation of and compliance with the terms of the consent order entered in the [Tulsa lawsuit].” Once again, the State seeks documents that are neither relevant to the issues in its lawsuit against the Defendants, nor capable of leading to the discovery of admissible evidence. The Settlement Order establishes certain activities that must occur during the four years post-settlement, including identifying items the participating defendants are required to fund. Case No. 01-CV-0900 EA(C), Docket No. 473. The Order also sets forth what elements of the post-settlement activities are to be made public in reports to the Court through the Special Master and Watershed Management Team. *Id.* at Ex. 1, Para. D(6), E(5), E(7). Accordingly, Cargill objected to this request.

Despite the arguments advanced in its Motion for production of the “operational” documents from the Tulsa lawsuit, the State offered no justification for invading confidential records to probe into the costs of the Tulsa settlement implementation funded by the participants beyond what Judge Eagan deemed necessary to disclose. The confidential elements of the Tulsa settlement and how they are being accomplished have no bearing on any claim of liability or defense in the instant lawsuit. The very notion that the State is entitled to these financial details, which Cargill deems to be confidential, undermines the incentive any party would have for settling such a claim. Even the settling party, the City of Tulsa, has no right to discover this information, as all that is relevant in that case is whether the Order is being complied with and the specific reports

the Court has required of the Special Master. The State has made no showing with regard to this material, and therefore, Cargill requests that the State's Motion with regard to Request No. 6 be denied.

CONCLUSION

For all of the above reasons, Defendant, Cargill, Inc. respectfully requests the Court deny the State's August 24, 2006 motion to compel.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on the 11th day of September, 2006, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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